

### **REMARKS/ARGUMENTS**

In the specification, the third full paragraph on page 13 has been amended to describe the panels in Figure 11. The first full paragraph on page 27 has been amended to remove the hyperlink. The paragraph spanning pages 25-26 has been amended to remove the box, and name the Greek character as "beta".

Claims 1-5, and 7-21 and 23- 26 remain in this application. Claims 7, 9, 25 and 26 have been amended, and claims 6 and 22 have been cancelled without prejudice or disclaimer. Upon entry of this amendment claims 1-5 and 7-21 and 23-26 will be pending.

Claim 7 has been amended to include the subject matter of claim 22. As a result claim 22 has been cancelled.

### **Claim Objections**

Claim 6 has been cancelled without prejudice or disclaimer. Therefore, the objection to this claim is moot.

Claim 7 has been amended to remove reference to parts "ii" and "iii" as suggested by Examiner, and to remove reference to fragments or derivatives.

Claims 25 and 26 have been amended to clarify the Markush groupings.

Removal of the objection to claims 6, 7, 25 and 26 is respectfully requested.

### **Objection under 35 U.S.C. 101**

Claim 6 has been rejected under 35 U.S.C. 101. Claim 6 has been cancelled without prejudice or disclaimer. Therefore, the objection to this claim is moot.

Removal of the rejection under 35 USC 101 is respectfully requested.

### **Objection under 35 U.S.C. 112**

Claims 6-13, 25 and 26 have been rejected under 35 USC 112 as Examiner alleges that these claims fail to comply with the written description requirement.

Claim 6 has been cancelled without prejudice or disclaimer.

Claims 7 and 9 have been amended to remove reference to fragments, and a complement of a fragment (claim 7).

Applicant disagrees with Examiners arguments that claim 7 as previously written does not comply with the written description requirement. Claim 7 defined conditions for stringent hybridization and described the utility of the regulatory element. Applicant notes that in Example 9 of the "Synopsis of Application of Written Description Guidelines" ("Example 9: Hybridization,"; see January 16, 2003; [www.uspto.gov/web/menu/written.pdf](http://www.uspto.gov/web/menu/written.pdf); pages 36-37), that for a sequence that is novel and unobvious in view of the prior art, where a single species is disclosed that is within the scope of the claimed genus, and where there is reduction to practice of the disclosed species, that the sequence may be defined in terms of hybridization.

However, in order to expedite allowance, claim 7 has been amended to include the subject matter of claim 22.

Claims 8-13, 25 and 26 each depend from claim 7 and include the limitations of this base claim. Removal of the rejection to claims 6-13, 25 and 26 under 35 USC 112 is respectfully requested.

**Objection under 35 U.S.C. 102**

Claims 6-13, 25 and 26 have been rejected under 35 USC 102(b) in view of Cramer et al.. Applicant respectfully traverses this rejection.

Examiner states in their arguments on page 11 of the office action that "[t]he promoter taught by Cramer et al inherently comprises the ability to hybridize the SEQ ID NO:4 under some stringency conditions, therefore, because no particular hybridization conditions are required in the instant claims, the promoter taught by Cramer et al is encompassed by the instant claim 7." Applicant respectfully disagrees with Examiners statement and conclusion.

Claim 7 as previously defined, clearly set out the conditions for stringent hybridization, and provided a function for the regulatory element:

"...the stringent hybridization conditions comprising, hybridization overnight (12-24 hrs) at 42°C in the presence of 50% formamide, followed by washing, or 5X SSC at about 65°C for about 12 to about 24 hours, followed by washing in 0.1X SSC at 65°C for about one hour, wherein the regulatory element exhibits harvest-inducible activity."

These conditions ensure that the sequence described by Cramer et al are not included within the claim.

Cramer teaches the promoter sequence obtained from 3-hydroxy-3-methylglutaryl CoA reductase (HMGR; EC 1.1.134). A BLAST search of SEQ ID NO:4 of the present invention does not identify the HMGR sequence disclosed by Cramer et al., and an alignment of the two sequence does not reveal any sequence similarity. This suggests that the sequence of SEQ ID NO:4 and HMGR would not hybridize under the stringent hybridization conditions as set out in claim 7. Therefore, Applicant submits that Cramer et al. does not anticipate claim 7, or the claims that depend from claim 7.

Reply to Office Action of 8/15/2007

However, in order to expedite allowance, claim 7 has been amended to incorporate the subject matter of claim 22. Claim 6 has been cancelled without prejudice or disclaimer.

Removal of the rejection to claim 6-13, 25 and 26 under 35 U.S.C. 102 (b) is requested.

It is respectfully submitted that the above-identified application is now in a condition for allowance and favourable reconsideration and prompt allowance of these claims are respectfully requested. Should the Examiner believe that anything further is desirable in order to place the application in better condition for allowance, the Examiner is invited to contact the applicant's undersigned attorney at the telephone number listed below.

Please charge any additional fees or credit any overpayment to Merchant & Gould P.C.,  
Deposit Account No. 13-2725.

Respectfully submitted,

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17 Dec '07

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